



Brevard County
Parks and Recreation Department



Construction Management Services Contract

OCI Florida, Inc., d/b/a Oliver Companies, Inc.

**Kennedy Point Park
4915 S. Washington Avenue, Titusville, Florida 32780**

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Construction Management Services Contract



This Contract made by and between the **Brevard County Board of County Commissioners**, a political subdivision of the State of Florida whose address is 2725 Judge Fran Jamieson Way, Viera, Florida 32940 (hereinafter referred to as "County"), and **OCI Florida, Inc. d/b/a Oliver Companies, Inc.**, a Minnesota Foreign Corporation registered to do business in the State of Florida (hereinafter referred to as "Contractor").

Whereas, the Board of County Commissioners recognizes the need to restore the dock, and to dredge a channel at Kennedy Point Park (hereinafter referred to as the "Project"); and

Whereas, the County has prepared a final site plan for the Project and has obtained all required permits requirements for the Project; and

Whereas, Contractor has indicated its desire to complete the Project per the permit specifications on behalf of the County and at the Contractor's expense; and

Whereas, at this time the Board of County Commissioners desires to enter into a Contract with Contractor to complete said Project.

Now, Therefore, in consideration of the premises and mutual covenants contained herein, the parties hereby agree, as follows:

Article 1 – Scope of Work

The Contractor accepts the relationship of trust and confidence established between him and the County by this Contract. The Contractor covenants with the County to furnish the best skill and judgment in furthering the interests of the County. The County shall assign a Parks Construction Manager to oversee the Project and Contractor agrees to work with and be bound by the decisions of the County Parks Construction Manager as it relates to the Project. The Contractor agrees to furnish efficient business administration and superintendence and use its best efforts to complete the Project in the best and soundest way, and in the most expeditious and economical manner consistent with the interest of the County.

1.1 Scope of Work

A general description of the Work/Project to be built/constructed/installed under this Contract is shown in **Attachment "A"**.

1.2 Extent of Contract

This Contract for Construction Management Services provides for labor, materials, and equipment to restore the dock and to dredge a channel at Kennedy Point Park and supersedes any prior negotiations, representations or agreements, whether oral or written. Contractor agrees to complete the Project and all work at the Contractor's sole expense.

This Contract shall not be superseded by any provisions of the documents for construction and may be amended **only by written instrument signed by both the County and Contractor.**

Article 2 - Contractor's Responsibilities

Contractor shall perform all services described in this Article.

2.1. Subcontractor Interfacing

The Contractor shall be the single point of interface with all Subcontractors, the County, and all of its agents and representatives. Before any work is begun on the Project or on any change order, Contractor shall obtain authorization from the County. However, when health and safety are threatened, the Contractor shall act immediately to remove the threat to health and safety. The Contractor shall advise the County Parks Construction Manager when a timely response is not occurring on any of the above.

2.2 Bonds

For those projects where the cost will exceed one hundred thousand dollars, in accordance with the provisions of Section 255.05, Florida Statutes, the Contractor shall provide to the County, on forms furnished by the County, certified copies of the recorded one-hundred percent Public Construction Performance Bond and one-hundred percent Public Construction Payment Bond each in an amount not less than the total construction cost as provided herein. Payment and Performance Bonds shall be recorded (by the Contractor) in the official record of the County in which the Project is located. The Contractor must provide a copy of the bond(s) to all subcontractors and notify them of deadlines to make claims under the bonds.

2.3 Quality Control

The Contractor shall develop and maintain a program, acceptable to the County, to assure quality control of the construction (this may include personnel if approved by the County). The Contractor shall have a qualified and competent superintendent to supervise the work. The County shall be the final judge of performance and acceptability.

2.4 Contract Time

Contractor shall provide a Master Project Schedule which shall be attached as **Attachment "B"**. As reflected in said Construction Schedule, Contractor is to achieve Substantial Completion of the Work within **One Hundred Twenty Days** from issuance of Notice to Proceed. Final Completion shall be achieved within an additional **One Hundred Eighty Days**.

2.5 Construction Phase

2.5.1 General

Contractor shall not begin work until a Notice to Proceed has been issued by the County. The Contractor shall cause all Work to be completed in accordance with the terms of **Attachment "A"**, including all permits and designs standards and within the Contract Time.

2.5.2 Contractor's Staff

The Contractor shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to act on behalf of the Contractor and to coordinate, inspect and provide general direction of the work and progress of the subcontractors, and the Contractor shall provide no less than those personnel during the respective phases of construction.

2.5.2.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor.

2.5.2.2 It is understood that such superintendent shall be acceptable to the County, and shall be the one who will continue in that capacity for the duration of the Project, unless the County otherwise agrees.

2.6 Administration

2.6.1 Contractor shall schedule and conduct weekly meetings, at a minimum, at which the County, Contractor and appropriate Subcontractors can discuss the status of the Project. Contractor shall prepare and promptly distribute meeting minutes within two business days after any such meeting is held.

2.6.2 Contractor shall provide Monthly Written Reports to the County on the progress of the entire Project. Contractor shall maintain a daily log containing a record of weather, subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the County may require. The log shall be available to the County at all times.

2.7 Professional Services

Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering, unless such services are specifically required by the Contract Documents for a portion of the Project or the Contractor has specifically agreed in writing to provide such services. In such event, Contractor shall cause such services to be performed by appropriately licensed professionals.

2.8 Unsafe Materials

If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created or brought on the site, Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the County in writing. County shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

In accordance with Section 255.40, Florida Statutes, the County will require that the Contractor certify, upon Project Completion, that to the best of its knowledge and ability no asbestos-containing materials and/or supplies have been purchased and/or installed on this Project.

2.9 Weather Protection

The Contractor shall be responsible to ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. All costs associated with this shall be the responsibility of the Contractor.

2.10 Job Site Requirements

- A.** The Contractor shall provide for each of the following activities as a part of the Contractor's Construction Phase services:
1. Maintain a log of daily activities, including, but not limited to, manpower records, weather, delays, and major decisions, and require the same of subcontractors.
 2. Maintain a directory of companies on the Project with names, addresses, telephone numbers, emergency telephone numbers and fax numbers of key personnel.
 3. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
 4. Provide a safety program for the Project to meet safety standards, including, but not limited to, Occupational Safety and Health Administration requirements.
 5. Monitor for subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
 6. Provide a quality control program.

2.11 Job Site Administration

The Contractor shall provide as part of the Contractor's Construction Phase services, administrative functions during construction, including but not limited to, the following:

A. Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing Project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing, labor allocations, etc. Review and coordinate each Subcontractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements.

Use the job site meeting as a tool for preplanning of work and enforcing schedules and for establishing procedures, responsibilities, and identification of authority for all to clearly understand.

Identify the party or parties responsible for follow-up on any problems, delay items or questions and document and implement the course for solution. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying events known to those present for appropriate attention and resolution.

B. Material and Equipment Expediting - Closely monitor material and equipment deliveries; implement inspection and follow-up procedures on commitments of all Suppliers and Subcontractors.

C. Payments to Subcontractor - Develop and implement a procedure for review, processing, and payment of applications by Subcontractors for progress and final payments.

D. Reports and Project Site Documents - Record the progress of the Project. Submit written progress reports to the including information on the Subcontractor's work, and the percentage of completion. Keep a daily log available to the County, and the Permitting Authority inspectors.

E. Substantial Completion - The Contractor shall notify the County, if applicable, in writing, that the Project will be ready for inspection to determine if it is substantially complete. The inspection will be conducted jointly between the County, the City and Contractor's representative. County shall furnish a written list of unfinished Work and defective work, commonly referred to as a "Punch List", which must be finished and corrected to obtain final completion.

At the County's option a specific area or segment of the Project may be inspected and/or determined substantially complete.

F. Final Completion - The Contractor shall notify the County, in writing, that the Project will be ready for final inspection. That inspection and any necessary testing shall be conducted in the same manner as the inspection for Substantial Completion. When the Project is finally and totally complete, including the elimination of all defects, a Certificate of Final Completion (**Attachment "C"**) will be issued by the County and the Project shall be submitted to the County for final acceptance.

The County shall conduct the inspections. The County may elect to have other persons of its choosing also participate in the inspections. The Total Project Schedule shall include these notices and inspections as activities.

The Contractor shall secure and transmit to the County all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books as part of final completion (in triplicate) unless stated otherwise in the Project specifications.

- G. Start-Up** - With the County's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the subcontractors.
- H. Record Drawings** - The Contractor shall monitor the progress of Work on marked-up field prints which, at Substantial Completion, shall prepare the final record drawings.
- I. Administrative Records** - The Contractor will maintain at the job site on a current basis, files and records such as, but not limited to the following:
 - 1. Contracts
 - 2. Logs Equipment
 - 3. Purchase/Delivery Logs
 - 4. Meeting Minutes
 - 5. Contract Changes
 - 6. "As-Built" Marked Prints
 - 7. Monthly Progress Reports
 - 8. Correspondence
 - 9. Files Transmittal Records
 - 10. Inspection Reports
 - 11. Punch Lists

The Project records shall be available at all times to the County and Architect/Engineer for reference or review.

- J. County Occupancy** - The Contractor shall provide services during the Construction Phase which will provide a smooth and successful County occupancy of the Project. The Contractor shall provide consultation and project management to facilitate County occupancy and provide transitional services to get the work, as completed by the contractors "on line" in such conditions as will satisfy County operational requirements.

The Contractor shall conduct the Contractor's preliminary punch list inspection and coordinate the completion of all punch list work to be done with County occupancy requirements in mind.

The Contractor shall catalog operational and maintenance requirements of equipment to be

operated by maintenance personnel and convey these to the County in such a manner as to promote their usability (in triplicate). The Contractor shall provide operational training, in equipment use, for building operators to a maximum of eight hours.

The Contractor shall secure required guarantees and warranties, assembled and organized (in a binder) and deliver same, in triplicate, to the County in a manner that will facilitate their maximum enforcement and assure their meaningful implementation.

The Contractor shall continuously review "As-Built" Drawings and mark-up progress prints to provide as much accuracy as possible.

K. Warranty - Where any work is performed by the Contractor's own forces or by Subcontractors under contract with the Contractor, the Contractor shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in Contract Documents, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and Specifications. With respect to the same Work, the Contractor further agrees to correct all work found by the County to be defective in material or workmanship or not in conformance with the Drawings and Specifications for a period of one year from the Date of Final Completion or as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Contractor shall collect and deliver to the County any specific written warranties given by others as required by the Contract Documents. Also, the Contractor shall conduct, jointly with the County a warranty inspection nine months after the date of County Occupancy. This warranty inspection will be scheduled by a representative of the County.

Article 3 - County's Responsibilities

3.1 County's Information

The County shall provide full information regarding County's requirements for the Project, including permit specifications and Contractor shall comply with the same.

3.2 County's Representative

The County shall designate a Parks Construction Manager or designee who shall be fully acquainted with the Project and who will have the authority to make changes in the Project. The County's Parks Construction Manager shall render decisions promptly and furnish information expeditiously. No changes to the Project Work or permit specifications shall be made without the County's prior written consent.

3.3 Project Fault or Defects

If the County becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, the County shall give prompt written notice thereof to the

Contractor and Architect/Engineer.

Article 4 – Joint Use Staging Area

4.1 Joint Use Staging Area

Contractor shall utilize the property as more particularly described in **Attachment “D”** hereinafter referred to as “joint use staging area”, for the joint use of both the County’s Project as more particularly described in this Agreement and for the Contractor’s development and construction of Contractor’s proposed Hotel and Convention Center. In the event the staging area is not used or ceases to be used for the stated joint purpose, this Agreement shall immediately terminate and the County shall thereafter have the right to re-enter and repossess the property.

4.2 Term

Contractor shall have the right to use the joint use staging area for the purposes of Section 4.1 of this Article for a term of two years, at which the time the parties agree to renegotiate the terms and conditions of this Article.

4.3 Enclosure of the Joint Use Staging Area

Contractor agrees to install a screened fence enclosure around the joint use staging area and ensure that said screened fence enclosure is secure and maintained in a safe, neat and orderly condition.

4.3 Maintenance

If the County, in its sole discretion, determines that the joint use staging area as described in **Attachment “D”** is not maintained in a safe, neat and orderly condition, the County shall notify Contractor and provide Contractor 24 hours to correct the condition. If the Contractor fails to correct the condition within the time provided by the County, the County reserves the right to re-enter the joint use staging area and correct the outstanding conditions at the sole expense of the Contractor. Contractor agrees to pay all costs incurred by the County in enforcing this subsection.

4.4 Repairs

Upon termination of the provisions of this Article, Contractor at its sole expense shall restore the joint use staging area to its original condition and shall notify the County when the work has been completed. County shall have the right to inspect the joint use staging area to verify that it has been returned to its original condition and shall have the right to require the Contractor to complete any additional work in the sole discretion of the County. Contractor agrees to pay all

costs incurred by the County in enforcing this subsection.

Article 5- Permitting and Inspection

5.1 Permits, Fees and Notices

Contractor shall secure and the County shall pay for any Brevard County building permit or other County permits and governmental fees and licenses necessary for proper execution of the Contract and which are legally required. Copies of all permits shall be submitted to the County.

5.2 The Contractor shall comply with any and all laws, County or municipal ordinances, rules or regulations and lawful orders of public authorities bearing on performance of the work required for the Project. Contractor shall give all required notices pursuant to any law, ordinance, rule or regulation and lawful orders of public authorities bearing on performance of the work required for the Project.

5.3 It is not the County's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify County, in writing, and necessary changes shall be accomplished by appropriate modification.

5.4 If the Contractor performs work knowing it to be contrary to laws, statutes, ordinances, approved permits for the Project, building codes, and rules and regulations without such notice to the County, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs and liability.

Article 6 - Schedule, Time of Commencement and Substantial Completion

6.1 A Project Substantial Completion Date, a Project Final Completion Date and a County Occupancy Date for completion of the Project in accordance with the Master Project Schedule, shall be established by the Contractor. The Contractor agrees to complete the construction in accordance with the agreed upon Substantial Completion Date, Final Completion Date and County Occupancy Date.

6.2 The date of County Occupancy shall occur as provided in this Article. Warranties called for by this Contract or by the Drawings and Specifications shall commence on the Date of Final Completion of the Project unless specified otherwise in the Project Specifications.

Article 7 – Public Records

7.1 Public Records Law and Audit Requirements

In the performance of this Contract, the Contractor shall keep books, records and accounts of all activities related to the Contract in compliance with generally accepted accounting procedures and in compliance with the Public Records Laws of the State of Florida (Including, but not limited to Chapter 119, Florida Statutes).

All records or documents created by Contractor or provided to Contractor by the County in connection with the activities or services provided by Contractor under the terms of this Contract, are public records and Contractor agrees to comply with any request for such public records or documents made in accordance with Chapter 119, Florida Statutes.

Records, documents, books and accounts ordinarily and necessarily required for the performance of this Contract shall be kept, maintained and open for inspection by the County, County's representative, and members of the public during regular business hours.

The Contractor shall provide the public with access to public records on the same terms and conditions that the public agency provides the records and at a cost that does not exceed the cost provided for in Chapter 119, Florida Statutes, or as otherwise provided by law (see also County Administrative Order, AO-47).

The Contractor shall also ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this Contract shall be subject to copyright by Contractor in the United States or any other country.

The Contractor shall meet all requirements for retaining public records and shall transfer, at no cost, to the County all public records in possession of the Contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County.

Failure to comply with the provisions of Subsection, as it relates to Public Records Laws of the State of Florida, Chapter 119, Florida Statutes, shall result in the County taking enforcement action against the Contractor including the cost to the County for gaining the Contractor's compliance which will include, but are not limited to, the gross hourly rate of the County's employee(s) contacts to the Contractor to obtain compliance with this section, litigation filing fees and attorney's fees.

If the Contractor has questions regarding the application of Chapter 119, Florida Statutes, to the Contractor's duty to provide Public Records relating to this contract, contact the custodian of Public Records at (321) 633-2046 or 2725 Judge Fran Jamieson Way, Building B, Suite 203, Viera, Florida 32940.

Article 8 - Changes in the Project

8.1 Change Orders

The County, without invalidating this Contract, may order changes in the Project within the general scope of this Contract consisting of additions, deletions or other revisions which may cause an increase or decrease in the Construction Completion Date. All changes in the Construction Completion Date not covered by an authorized contingency must be authorized by a written Change Order or Construction Change Directive, and signed by the County and Contractor before the change is implemented.

8.1.1 A Construction Change Directive is a change directive signed by the Parks Construction Manager and the County Manager directing an addition, deletion, or revision in the scope of work and/or schedule. The Construction Change Directive is necessary when no Contract exists among the Architect/Engineer of record, the County, and the Contractor on the dollar amount of a necessary change in the scope of work and/or an extension of time to the construction contract. The Construction Change Directive is used:

- A.** when an unsafe, hazardous or other similar condition exists
- B.** when failure to achieve prompt resolution of the change will result in a demobilization of the Contractor, its subcontractors and/or agents
- C.** when failure to achieve prompt resolution will result in additional cost, and/or a significant delay in completing the project.

A Construction Change Directive does not change the contract price or the contract time, but is evidence that the parties expect that the change will be incorporated in a subsequently issued Change Order or be covered by an authorized contingency.

8.1.2 A Change Order is a written order to the Contractor signed by the County, and Contractor, issued after the execution of this Contract, authorizing a change in the Project and/or an adjustment in the construction authorization or the Construction Completion Date.

8.1.3 In the event the Contractor or its contracted subcontractors encounter the following:

- A.** concealed conditions in the performance of the Work below the surface of the ground; or

- B.** concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or County furnished information; or
- C.** unknown physical conditions below the surface of the ground; or
- D.** concealed or unknown conditions in an existing structure of an unusual nature;
- E.** differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, then the Construction Completion date shall be equitably adjusted by Change Order upon a request for Change Order.

Upon discovery of the above concealed or unknown conditions, the Contractor shall notify the County and Architect/Engineer within twenty-four hours of discovery, and not proceed with Work until such notice has been given and a response is issued by the County. The County will evaluate the alleged unknown or concealed condition

Within ten days of submitting its Notice, the Contractor shall submit to the County its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected. Within ten days from Notice, the Contractor shall submit detailed schedule impact.

8.1.4 The Contractor shall review any County directed change and shall respond in writing within seven days after receipt of the proposed change (or such other reasonable time as the County may direct), stating the effect of the proposed change upon the Contractor's Work, including any increase or decrease in the contract time.

The County shall review the Contractor's proposal and respond to the Contractor within seven days of receipt. If a change to the Contract time for performance is agreed upon, both parties shall sign the Change Order. Changes to the Contract time shall be effective when signed by both parties

8.2 Claims for Additional Time

All claims for additional time shall be made by request for a change order submitted.

8.2.1 If the Contractor is delayed at any time in the progress of the work by any act or neglect of the County or by any separate Contractor employed by the County or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond the Contractor's control or by delay authorized by the County pending resolution or dispute, and such delay extends the completion date, the Substantial Completion shall be extended by Change Order for such reasonable time as the Construction Team may determine.

8.2.2 All change orders must indicate that the Contract Time for Completion is not changed or

is either increased or decreased by a specific number of days. The previous Time for Completion and, if there is one, the new Time for Completion must be stated. The Contractor must provide written justification for an extension of the Time for Completion to the County. The written justification must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior change orders or amendments to the Contract, not just an increase or decrease in the time needed to complete some portion of the total Work. No increase to the Time for Completion shall be allowed unless the additional or changed Work increases the length of the Master Project Schedule. Approved increases in time required to complete the Work shall be added to the Time for Completion. Decreases in time as a result of the change order shall be demonstrated by a decrease in the Master Project Schedule of the Work if Construction Project Manager scheduling is properly used and updated by the Contractor. If no Construction Project Manager is used, the County shall determine the appropriate decrease by the best means possible. Approved decreases in the time needed to complete the Work shall be deducted from the Contract completion date. The change to time and Contract price allowed by each change order shall include all time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the project. Failure to include a change to time and Contract price in a change order shall waive any change to the time and Contract price unless the parties mutually agree in writing to postpone a determination of the change to time and price resulting from the change order. Such a determination may be postponed not more than forty-five days to give the Contractor an opportunity to demonstrate a change in the time and price needed to complete the Work.

Only delays which are determined to extend the Master Project Schedule for the schedule for constructing the Project will result in a time extension. Neither the County nor the Contractor shall be considered to own the schedule float time.

Article 9 - Insurance, Indemnity Waiver of Subrogation

9.1 Indemnification

- A.** The Contractor agrees to indemnify and hold harmless the County, and its employees and agents, from all claims, losses and expenses, arising out of or resulting from the performance of the products or services to be contracted, provided such claim, damage, loss or expense:
1. is attributable to bodily injury, sickness, disease, death or personal injury, or to property damage, including loss of use resulting therefrom, (but not loss of use for which liquidated damages are assessed under the Contract) and
 2. is caused in whole or in part by any act or omission, negligent or otherwise, of the Contractor, any subcontractor, any of their employees and/or agents in the performance

of this contract. The Contractor agrees that it will pay the costs of the County's legal defense, including reasonable fees of attorneys as may be selected by the County, and shall defend, satisfy, and pay any judgments which may be rendered against the County in connection with the above hold harmless language. The Contractor acknowledges specific consideration has been received for this hold harmless/indemnification provision.

- B.** The County shall cause any other Contractor who may have a contract with the County to perform construction or installation work in the area where work will be performed under this Contract, to agree to indemnify the County and the Contractor and hold them harmless from all claims for bodily injury and property damage that may arise from the Contractor's operations.
- C.** Loss Deductible Clause - The County shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Contractor and/or Subcontractor providing such insurance.

The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28.

9.2 Insurance

- A.** The Contractor shall not commence any construction work in connection with this Contract until the Contractor has obtained all of the following types of insurance and such insurance certificate(s) have been submitted to the County and have been approved by the County, nor shall the Contractor allow any Subcontractor to commence work on his subcontract until all insurance required of the Subcontractor has been so obtained and approved. All insurance policies shall be with insurers qualified and doing business in the State of Florida.
 - 1. Commercial General Liability** - Including but not limited to bodily injury, property damage and personal injury with limits of not less than Two Million Dollars per occurrence, including products and completed operations, to include:
 - a) "XCU" (Explosion, Collapse, Underground Damage)** - The Contractor's Liability Policy shall provide "XCU" coverage.
 - b) Broad Form Property Damage Coverage, Products and Completed Operations Coverage** - The Contractor's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages.
 - c) Contractual Liability Work Contracts** - The Contractor's Liability Policy shall include Contractual Liability Coverage designed to protect the Contractor for contractual liabilities assumed by the Contractor in the performance of this Contract.

2. **Automobile Liability** - Including bodily injury, property damage liability for all vehicles owned, hired, leased and non-owned with limits of not less than Two Million Dollars per occurrence.
3. **Worker's Compensation** - Workers Compensation insurance providing statutory benefits as required in the State of Florida. The Contractor shall require any Subcontractor to provide evidence of this coverage. Additionally, if the contract requires working on or around a navigable waterway, the Contractor and all Subcontractors shall provide evidence of United States Longshoremen's and Harbor Workers (USL&H) coverage and contingent coverage of Jones Act (Marine Employers Liability) in compliance with Federal statutes or proof of exemption. The Contractor shall be responsible for compliance with these requirements by each Subcontractor, vendor or supplier.
4. **Professional Liability Insurance** - In the event that the contract involves professional or consulting services, in addition to the aforementioned insurance requirements, the vendor shall also be protected by a Professional Liability Insurance Policy in the amount of One Million Dollars per occurrence.
5. **Builders Risk Insurance** - In the event the contract involves services related to construction projects, the vendor shall also procure and maintain a Builders Risk Insurance Policy or Installation Floater with loss limits equal to the value of the construction project and issued to provide coverages on an "all risk" basis including theft.

In addition to the above, Specialty Insurance policies covering specific risks of loss (including but not limited to, for example; Longshore coverage, Crane and Rigging, Inland Marine, etc.) may be required by Brevard County Risk Management. Any additional specialty insurance coverage requirement will be dictated by the specific goods, products or services provided under the subject contract and insurance underwriting standards, practices, procedures or products available in the commercial insurance market at the time of the contract inception. The Vendor is required to procure and maintain all such specialty coverage in accordance with prudent business practices within the Vendors industry.

- B. **Performance and Payment Bonds** - With limits of not less than one hundred percent of the total construction cost of this project. Payment and Performance Bond shall be recorded in the official record of the County in which the project is located. These bonds shall remain in effect at least until one year after the date when the final payment is approved. Any bonding company submitting a Bid Bond, Performance Bond or Payment Bond to Brevard County must be licensed to transact a fidelity and surety business in the State of Florida, and hold a Certificate of Authority from the Secretary of the Treasury under Act of Congress, approved by July 30, 1947 (United States Code 613), and approved by Brevard County. Acceptable surety companies shall be licensed to do business in Florida and shall have an A.M. Best

Rating of "A-" and financial size V or higher.

The Contractor shall require each of its subcontractors to procure and maintain insurance during the life of the respective subcontracts.

C. Certificate of Insurance - The County shall be furnished proof of coverage of Insurance as follows:

Certificate(s) of Insurance will be furnished to the County within five days of the issuance of the Notice to Proceed. All Certificate(s) of Insurance shall be completed and signed by the authorized Resident Agent, and shall be dated and show:

1. The name of the insured Contractor, the specific job by name and job number, the name of the insurer, the number of the policy, its effective date, and its termination date.
2. The General Liability and Auto Liability certificates of insurance shall indicate that the policies have been endorsed to cover the Brevard County Board of County Commissioners as an additional insured to the extent of liability assumed by the Contractor under this Contract, and that these policies may not be canceled or modified without thirty days prior written notice to the County.
3. The insurance coverages enumerated above constitute the minimum requirements and shall in no way lessen or limit the liability of the Contractor under the terms of the Contract.

Certificates of Insurance shall be submitted to the County within five days of Notice to Proceed, and no work shall commence on site until all submitted Certificates of Insurance are acceptable to the County.

9.3 Waiver of Subrogation

9.3.1 The County and the Contractor waive all rights against each other, for damages caused by perils covered by insurance provided under this Contract to the extent covered by such insurance except such rights as either party may have to the proceeds of such insurance held by the County and Contractor as trustees. The Contractor shall require similar waivers from all subcontractors and its sub-subcontractors.

9.3.2 The County and Contractor waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Contractor shall require similar waivers from all subcontractors and their sub- subcontractors.

9.3.3 The County waives subrogation against the Contractor on all property and consequential loss policies carried by the County on adjacent properties and under property and consequential

loss policies purchased for the Project after its completion.

9.3.4 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the County of such policies will cause them to be so endorsed. Failure to obtain proper endorsement nullifies the waiver of subrogation.

Article 10 - Termination

10.1 County's Right to Perform Contractor's Obligations and Termination by County for Cause

- A.** If the Contractor fails to perform any of its obligations under this Contract, the County may, after fourteen days written notice during which period the Contractor fails to perform such obligations and without prejudice to any right or remedy the County may have, terminate this Contract and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and finish the Project by whatever method the County deems expedient.
- B.** If the Contractor is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the master project schedule that falls forty-five days or more behind schedule) which has been adopted by the Construction Team, or if it fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract, then the County may, without prejudice to any right or remedy and after giving the Contractor and its surety, if any, seven days written notice, during which period Contractor fails to cure the violation, terminate this Contract and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, and may finish the Project by whatever method the County deems expedient

10.2 Termination for Prohibition Against Contracting With Scrutinized Companies

- A.** The Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, Florida Statutes, the County may immediately terminate this Contract at its sole option if the Contractor or its subcontractors are found to have submitted a false certification; or if the Contractor, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of

Israel during the term of the Contract.

If this Contract is for more than one million dollars, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, Florida Statutes, the County may immediately terminate this Contract at its sole option if the Contractor, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Contractor, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Contract.

The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Contract.

- B.** As required by Section 287.135(5), Florida Statutes, prior to entering into a contract in excess of one million dollars to provide goods or services to Brevard County, an individual with authority to execute this Contract for the Contractor shall file a sworn statement with the contracting officer or Purchasing Director, as applicable verifying that none of the three conditions above exist. If the Contractor is found to have falsified the affidavit attached as **Attachment “E”**, the County may terminate the contract.
- C.** If subsequent to the submittal of the attached affidavit, the Contractor: (1) has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel; (2) is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or (3) is engaged in business operations in Cuba or Syria, the County may terminate this Contract.
- D.** Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Contract. As provided in Section 287.135(8), Florida Statutes, if Federal law ceases to authorize these contracting prohibitions, this Subsection shall become inoperative and unenforceable.

Article 11 - Assignment; Governing Law; Venue; Severability

11.1 Neither the County nor the Contractor shall assign their respective interest in this Contract without the written consent of the other except as to the assignment of proceeds.

11.2 This Contract shall be governed by the Laws of the State of Florida.

11.3 Venue and Attorney’s Fees: Venue for any legal action brought by any party to this Contract to interpret, construe or enforce this Contract shall be in a court of competent

jurisdiction in and for Brevard County, Florida. In the event of any legal action to enforce the terms of this Contract, each party shall bear its own attorney's fees and costs and any trial shall be non-jury.

11.4 Severability: If any provision of this Contract is held by a Court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired

Article 12 - Miscellaneous

12.1 Minority Employment Information

The County requires construction contractors, who would otherwise be required to file an Equal Employment Opportunity Form 1 Report under Federal Law (currently Federal law requires filing for employers with more than fifteen employees), to submit an Equal Employment Opportunity Form 1 Report with the submission of their Guaranteed Maximum Price. This requirement extends to any subcontractors who are required to submit the Equal Employment Opportunity Form 1 Report (over fifteen employees) under Federal law. Failure to submit an EEO Form 1 Report with the Guaranteed Maximum Price will be reason to declare the submission "non-responsive". However, the information will be used for statistical purposes only and will not be used in any way as a basis to award a contract. See **Attachment "F"**.

12.2 Public Entity Crime Affidavit

Attached as **Attachment "G"**.

12.3 Copyright Clause

No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this Contract shall be subject to copyright by Contractor in the United States or any other Country.

12.4 E-Verify:

- A.** The Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Contractor during the term of the Contract; and
- B.** The Contractor shall expressly require any subcontractors performing work or providing services pursuant to this Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term; and
- C.** The Contractor agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participations by its subcontractors as provided above, and to make such records available to the County consistent with the terms of the Contractor's enrollment in the program. This includes maintaining a copy of proof of the

Contractor's and subcontractors' enrollment in the E-Verify Program.

- D.** The Contractor's compliance with the terms of this section is made an express condition of this Contract and the County may treat a failure to comply as a material breach of this Contract.
- E.** A contractor who registers with and participates in the E-Verify program may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E-Verify program, the contractor hires or employs a person who is not eligible for employment.
- F.** Nothing in this section may be construed to allow intentional discrimination of any class protected by law.

In Witness Whereof, the parties have hereunto set their hands and seals on the day and year written herein below.

Reviewed for Legal Form and Content




Abigail Forrester Jorandby
Assistant County Attorney

**Board of County Commissioners of
Brevard County, Florida**

By: _____
Bryan Lober, Date
Chair
As approved by the Board on 2/11/2020

**OCI Florida, Inc. d/b/a Oliver
Companies, Inc.**

By: 

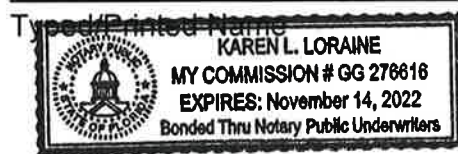
Kent Oliver, President Date

State of Florida
County of Brevard

The foregoing instrument was acknowledged before me this 27th day January of 2020 by Kent Oliver whose position is President with the firm of **OCI Florida, Inc., d/b/a Oliver Companies, Inc.**, a Florida Corporation, on behalf of the corporation. He is personally known to me or has produced 7L DL as identification.



Notary Public



Attachment "A"

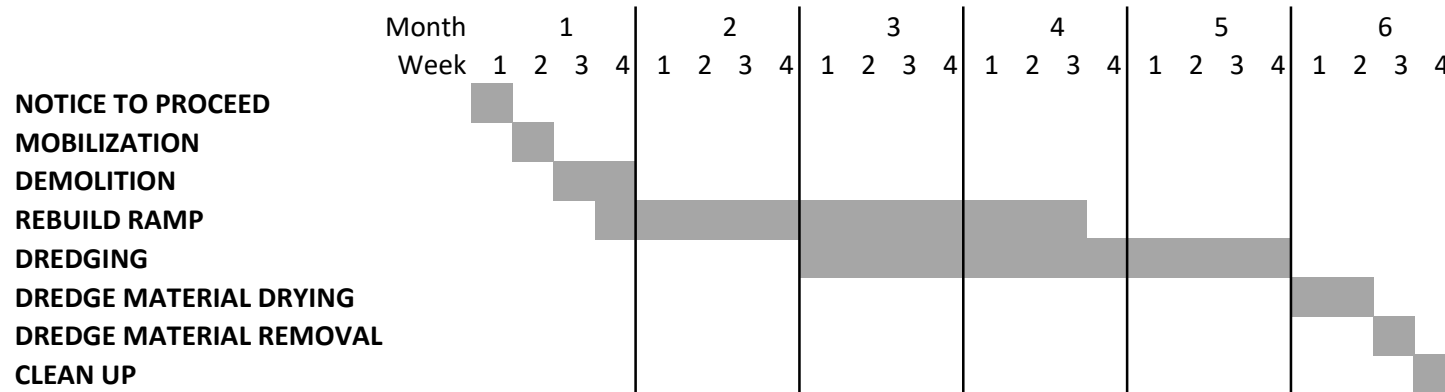
Scope of Work

Contractor shall complete the following work per the requirements and specifications as set forth in the St. John's River Water Management Permit issued to Brevard County:

1. Demolish existing dock and construct new dock by replacing pilings, cross supports stringers and decking;
2. Repair and/or replace wave break wall to original condition and height;
3. Construct settlement basin outfall structure and discharge piping;
4. Dredge - 5 feet to MHWL to channel (approximately 881 CY);
5. Dewater and haul all dredge spoils offsite to a Florida Department of Environmental Protection Agency approved disposal site;
6. Adhere to sediment and erosion control requirements using silt fence, turbidity barriers, hay bales and other erosion controls as required for site conditions and approved by the County; and
7. Any other work required under the St. John's River Water Management Permit issued to Brevard County.

ATTACHMENT "B" CONTRACT TIME

1- 2 0- 2 0



Attachment "C" - Certificate of Final Completion

Project Number and Title: **Kennedy Point Park Dock and Dredging**

Parks Construction Manager:

Contractor: OCI Florida, Inc. d/b/a Oliver Companies, Inc.

Contract Date: _____

Date of Final Completion: _____

Certificate of Project Director:

Based on my inspections and investigation of the Contractor's work under the above referenced contract, I certify that the work, in general, has been completed in accordance with the contract documents, that all matters previously brought to the Contractor's attention as incomplete or defective have been resolved pursuant to my direction, and that the Contractor has submitted the attached sworn affidavit as evidence that the Contractor has paid all labor, materials, and other charges against the project in accordance with the terms of the Contract.

Michael Butcher, Brevard County Parks and Recreation

By: _____

Through the Substantial Completion Phase:

DATE: _____

DAYS: _____

1. Notice to Proceed (NTP):
2. Time Specified in Original Contract for Substantial Completion (SC):
3. Extension granted by Change Order:
(days between original contract SC and Final Contract SC)
4. Total Days Allowable to Substantial Completion:
(add lines 2 and 3)
5. Project Substantially Completed as Certified by A/E:
6. Substantial Completion Overrun:
(subtract line 4 from 5 and enter overrun)

Through the Final Completion Phase:

DATE: _____

DAYS: _____

1. Time Specified in Contract, between SC and Final Completion (FC):
2. Extensions granted by Change Orders:
(Days between SC and FC)
3. Total Days allowable between SC and FC:
(add lines 1 and 2)
4. Date Actually Completed and Total Days between
and Date Certified by A/E as actually being FC:
5. Final Completion Overrun (subtract line)

Project Manager: _____

Date: _____

ATTACHMENT "D"



DATE _____
ORDER NO. _____
FB. NO. _____
SCALE. _____
DWG.NO. _____

Honeycutt & Associates, Inc.

ENGINEERS • SURVEYORS • PLANNERS

3700 South Washington Avenue • Titusville, Florida 32780

(321) 267-6233 Fax (321) 269-7847

CERTIFICATE OF AUTHORIZATION NO. LB 6762

Attachment "E"

- Vendor Affidavit Regarding Scrutinized Company List

Pursuant to Section 287.135(2), Florida Statutes, a company is ineligible to, and may not bid on, submit a proposal for, or enter into or renew a contract with an agency or local government entity for goods or services of \$1 million or more if at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, the company: (1) is on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.475, or is engaged in a boycott of Israel; (2) is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473 or (3) is engaged in business operations in Cuba or Syria.

If the bidder or contractor is found to have falsified the attached affidavit, the Board of County Commissioners of Brevard County may terminate the contract or reject the bid.

State of Florida
County of Brevard

Before me, the undersigned authority, personally appeared _____, who, being by me first duly sworn, made the following statement:

1. The Business address of **OCI Florida, Inc., d/b/a Oliver Companies, Inc.**
_____.
2. My relationship to **OCI Florida, Inc., d/b/a Oliver Companies, Inc.** is _____.
3. I understand that "Boycott of Israel" has the same meaning as defined in Section 215.4725, Florida Statutes, and means refusing to deal, terminating business activities, or taking other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner. A statement by a company that is participating in a boycott of Israel, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of, calls for a boycott of Israel, may be considered by the State Board of Administration to be evidence that a company is participating in a boycott of Israel. The term does not include restrictive trade practices or boycotts fostered or imposed by foreign countries against Israel.
4. I understand that "business operations" means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating

equipment, facilities, personnel, products, services, personal property, real property, military equipment or any other apparatus of business or commerce.

5. **OCI Florida, Inc., d/b/a Oliver Companies, Inc.,** is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel.
6. **OCI Florida, Inc., d/b/a Oliver Companies, Inc.,** is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy List, created pursuant to Section 215.473, Florida Statutes.
7. **OCI Florida, Inc., d/b/a Oliver Companies, Inc.,** is not engaged in business operations in Cuba or Syria.

Signature

SWORN to and subscribed before me in the State and County first mentioned above on the

_____ Day of _____, 2019.

Notary Public

(affix seal)

My Commission Expires:

Attachment “F” - Minority Employment Information

The Board of County Commissioners requires construction contractors, who would otherwise be required to file an Equal Employment Opportunity (EEO) Form 1 Report under Federal Law (currently Federal law requires filing for employers with more than 15 employees), to submit an EEO Form 1 Report with the submission of their GMP. This requirement extends to any subcontractors who are required to submit the EEO Form 1 Report (over 15 employees) under Federal law. Failure to submit an Acknowledgement and/or EEO Form 1 Report with your GMP will be reason to declare your proposal “non-responsive” to the proposal requirements. However, the information will be used for statistical purposes only and will not be used in any way as a basis to award a contract.

Please fill out and sign one (1) of the following statements:

1. My Company or subcontractors are required to submit the EEO Form 1 Report and they are attached.

Company Name: _____

Signature: _____

Date: _____

2. My Company or subcontractors are not required to submit the EEO Form 1 Report.

Company Name: _____

Signature: _____

Date: _____

Company Name: **OCI Florida, Inc., d/b/a Oliver Companies, Inc.**

Company Address:

Company Telephone: _____

Signature: _____ Printed: _____

Attachment “G” - Public Entity Crime Acknowledgment

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for Category Two (Fifteen Thousand Dollars) for a period of thirty six months from the date of being placed on the convicted vendor list.

Non Collusion Affidavit of Prime Bidder

State of Florida
County of Brevard

_____, being duly sworn, deposes and says that:

1. Affiant is President of **OCI Florida, Inc. d/b/a Oliver Companies, Inc.**, the Bidder that has submitted a bid/quote/proposal;
2. Affiant is fully informed respecting the preparation and contents of the bid/quote/proposal and of all pertinent circumstances respecting such bid/quote/proposal;
3. Such bid/quote/proposal is genuine and is not a collusive or sham bid/quote/proposal;
4. Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham bid/quote/proposal in connection with the Contract for which the bid/quote/proposal has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by Contract, or has in any manner, directly or indirectly, sought by the agreement or collusion of communication or conference with any other bidder, firm or person to fix the price or prices in the bid/quote/proposal or of any other Bidder, or to fix any overhead, profit or cost element of the bid/quote/proposal price or the bid/quote/proposal price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Board of County Commissioners of Brevard County, Florida, or any person interested in the contract; and
5. The price or prices negotiated for the bid/quote/proposal are fair and proper and are not

tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties of interest, including affiant.

_____, President

SWORN to and subscribed before me in the State and County first mentioned above on the _____ Day of _____, 2019.

Notary Public (affix seal)

My Commission Expires: